

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE :  
PREVENTION OF CRUELTY TO :  
ANIMALS, et al., :  
:  
Plaintiffs, :  
:  
v. :  
RINGLING BROS. AND BARNUM & :  
BAILEY CIRCUS, et al., :  
:  
Defendants. :

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Case No. 03-2006 (EGS/JMF)

DEFENDANT’S OPPOSITION TO PLAINTIFFS’ MOTION UNDER RULE 11

**EXHIBIT 90**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

PERFORMING ANIMAL WELFARE	)	<u>C.A. NO. 00-1641</u> (EGS)
SOCIETY, ET AL.	)	
VS.	)	WASHINGTON, D.C.
	)	SEPTEMBER 23, 2003
RINGLING BROTHERS, ET AL.	)	10:00 A.M.

TRANSCRIPT OF INITIAL STATUS CONFERENCE  
BEFORE THE HONORABLE EMMET G. SULLIVAN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: KATHERINE MEYER, ESQ.  
KIMBERLY OCKENE, ESQ.

FOR THE DEFENDANTS: EUGENE GULLAND, ESQ.  
JOSHUA WOLSON, ESQ.

COURT REPORTER: FRANK J. RANGUS, OCR  
U. S. COURTHOUSE, RM. 6822  
WASHINGTON, D.C. 20001  
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PROCEEDINGS RECORDED BY ELECTRONIC STENOGRAPHY; TRANSCRIPT  
PRODUCED BY COMPUTER.

1 THE DEPUTY CLERK: CIVIL ACTION 00-1641, PERFORMING  
2 ANIMAL WELFARE SOCIETY, ET AL. VS. RINGLING BROTHERS, ET AL.

3 WOULD COUNSEL PLEASE IDENTIFY YOURSELVES FOR THE  
4 RECORD?

5 MS. MEYER: GOOD MORNING, YOUR HONOR.

6 THE DEPUTY CLERK: WOULD COUNSEL PLEASE IDENTIFY  
7 YOURSELF FOR THE RECORD?

8 MS. MEYER: KATHERINE MEYER FOR THE PLAINTIFFS, AND  
9 WITH ME IS MY ASSOCIATE, KIM OCKENE.

10 THE COURT: ALL RIGHT, GOOD MORNING.

11 MR. GULLAND: GOOD MORNING, YOUR HONOR.

12 I'M GENE GULLAND FOR THE DEFENDANTS. MY COLLEAGUE  
13 JOHN WOLSON, ALSO.

14 THE COURT: ALL RIGHT, GOOD MORNING, COUNSEL.

15 I THINK THE FINAL PLEADING WITH RESPECT TO THE MOTION,  
16 THE FINAL PLEADING WITH RESPECT TO THE PENDING MOTION FOR  
17 JUDGMENT ON THE PLEADINGS WAS JUST FILED YESTERDAY, I BELIEVE.  
18 IS THAT RIGHT? THAT WAS PLAINTIFFS' REPLY, AND IT JUST CROSSED  
19 MY DESK LATE, VERY LATE, LAST EVENING. THIS MATTER IS HERE FOR  
20 AN INITIAL SCHEDULING CONFERENCE. I REALLY NEED TO RESOLVE  
21 THAT ISSUE BEFORE WE PROCEED ANY FURTHER, BUT LET ME JUST, SO  
22 THE RECORD IS CLEAR IN MY MIND ANYWAY, IS IT, AM I CORRECT IN  
23 SAYING THAT, INDEED, THE REMAINING PLAINTIFFS IN THIS CASE DID  
24 NOT PROVIDE THE ADMINISTRATIVE NOTICE? THAT'S CLEAR. IS THAT  
25 CORRECT?

1 MS. MEYER: THAT'S RIGHT, YOUR HONOR.

2 THE COURT: ALL RIGHT, AND WHAT YOU'RE RELYING UPON,  
3 THEN, IS THE NOTICE PROVIDED BY SOMEONE ELSE. IS THAT RIGHT?

4 MS. MEYER: THE ORIGINAL PLAINTIFFS TO THE ACTION,  
5 YOUR HONOR.

6 THE COURT: THE ORIGINAL PLAINTIFFS?

7 MS. MEYER: THAT'S RIGHT.

8 THE COURT: OKAY, AND IS THERE SOME PRECISE AUTHORITY  
9 THAT SUPPORTS THAT?

10 MS. MEYER: THERE'S NO CASE THAT'S ACTUALLY ADDRESSED  
11 THE SPECIFIC ISSUE BROUGHT UP BY THE DEFENDANTS, BUT THE PLAIN  
12 LANGUAGE OF THE STATUTE DOES NOT REQUIRE THAT ALL OF THE  
13 REMAINING PLAINTIFFS IN THE CASE HAVE PROVIDED NOTICE BEFORE  
14 THE CASE WAS COMMENCED. THE PLAIN LANGUAGE OF THE STATUTE SAYS  
15 THAT NO CASE CAN BE COMMENCED PRIOR TO 60 DAYS AFTER NOTICE HAS  
16 BEEN GIVEN TO THE DEFENDANT OF THE ALLEGED VIOLATIONS. THE  
17 ENDANGERED SPECIES ACT, WHICH THIS CASE FALLS UNDER, DOES NOT  
18 HAVE A NOTICE PROVISION LIKE THE OTHER NOTICE PROVISION THAT  
19 THE DEFENDANTS ARE RELYING ON, WHICH ACTUALLY SAYS THAT THE  
20 PLAINTIFF MUST PROVIDE THE NOTICE, AND IN THIS CASE --

21 THE COURT: AND THIS ONE DOES NOT SAY THE PLAINTIFF?

22 MS. MEYER: IT DOES NOT SAY THE PLAINTIFF, YOUR HONOR.

23 AND IN THIS CASE, YOUR HONOR, OF COURSE, SOME OF THE  
24 ORIGINAL PLAINTIFFS DID ACTUALLY PROVIDE THE NOTICE. THE  
25 DEFENDANTS ARE TAKING THE POSITION THAT, UNDER THE ENDANGERED

1 SPECIES ACT, YOU CANNOT CONTINUE TO MAINTAIN THE ACTION ALL THE  
2 WAY THROUGH THE LITIGATION UNLESS ALL OF THE PLAINTIFFS WHO  
3 REMAIN IN THE CASE THROUGHOUT THE LITIGATION ORIGINALLY GAVE  
4 THE NOTICE, AND THAT'S SIMPLY NOT PROVIDED FOR.

5 THE COURT: IF YOU'RE CORRECT, THEN THAT MEANS "A"  
6 WHO'S NOT A PARTY AND NEVER HAS BEEN A PARTY TO THIS AND WHO  
7 PROVIDED NOTICE, SAY, THREE MONTHS AGO BECAUSE "A" WAS ENRAGED  
8 ABOUT WHAT HE LEARNED AND DIDN'T PURSUE LITIGATION AT ALL, IF  
9 WHAT YOU'RE SAYING IS CORRECT, THEN A'S NOTICE SATISFIES THE  
10 NOTICE REQUIREMENT OF THE STATUTE TO PAVE THE WAY FOR YOUR  
11 CLIENTS TO BE PARTY-PLAINTIFFS IN THIS LAWSUIT.

12 MS. MEYER: UNDER THE PLAIN LANGUAGE OF THIS STATUTE,  
13 WHICH, AS THE SUPREME COURT SAID, MUST BE APPLIED LITERALLY, AS  
14 LONG AS THE SAME NOTICE PROVISIONS ARE GIVEN, 60 DAYS AFTER THE  
15 COMMENCEMENT OF THE ACTION, THAT WOULD BE CORRECT, YOUR HONOR.  
16 YOU DON'T HAVE TO GO THAT FAR IN THIS CASE, BECAUSE IT'S  
17 UNDISPUTED THAT SOME OF THE ORIGINAL PLAINTIFFS WERE JOINT  
18 PLAINTIFFS WITH THE PLAINTIFFS REMAINING IN THE ACTION WHO DID  
19 PROVIDE THE NOTICE.

20 THE COURT: AT LEAST THERE'S SOME NEXUS AMONG THE  
21 PLAINTIFFS.

22 MS. MEYER: YES. ALL OF THE PLAINTIFFS BROUGHT THE  
23 LAWSUIT TOGETHER, AND SOME OF THE PLAINTIFFS WERE ACTUALLY  
24 NAMED IN THE NOTICE LETTERS.

25 THE COURT: ALL RIGHT.

1 MS. MEYER: BUT AGAIN, YOUR HONOR, THE PLAIN LANGUAGE  
2 OF THIS STATUTE IS DIFFERENT THAN THE LANGUAGE OF THE OTHER  
3 STATUTES WHICH REQUIRE THAT THE PLAINTIFF ACTUALLY PROVIDE THE  
4 NOTICE, AND THIS STATUTE WAS WRITTEN AFTER THOSE STATUTES  
5 AND --

6 THE COURT: SO WHAT DID CONGRESS --

7 MS. MEYER: -- WE HAVE TO PRESUME CONGRESS HAD  
8 SOMETHING IN MIND.

9 THE COURT: WHAT DO YOU THINK CONGRESS HAD IN MIND?

10 MS. MEYER: I DON'T KNOW, YOUR HONOR.

11 THE COURT: THIS LAWSUIT. THIS LAWSUIT, RIGHT?

12 MS. MEYER: I THINK THAT PERHAPS CONGRESS THOUGHT THAT  
13 WHEN YOU'RE TALKING ABOUT A VIOLATION OF THE ENDANGERED SPECIES  
14 ACT, THAT AS LONG AS THE ALLEGED VIOLATOR IS PUT ON NOTICE OF  
15 THE VIOLATION, TIME'S OF THE ESSENCE AND THERE'S NO REASON TO  
16 REQUIRE THAT EVERY SINGLE PLAINTIFF HAVE PROVIDED NOTICE TO  
17 THOSE DEFENDANTS. BUT I DON'T KNOW, YOUR HONOR. WE'RE JUST  
18 GOING BY THE PLAIN LANGUAGE OF THE STATUTE.

19 THE COURT: THERE'S NO LEGISLATIVE HISTORY THAT WOULD  
20 SHED ANY LIGHT ON THAT?

21 MS. MEYER: NOT THAT I'VE SEEN, YOUR HONOR. IN ANY  
22 EVENT, AS WE ALSO POINT OUT, YOUR HONOR, ALL OF THE REMAINING  
23 PLAINTIFFS SUBSEQUENTLY GAVE NOTICE, AND THE UPSHOT OF ALL  
24 THIS, IF THE DEFENDANTS ARE CORRECT --

25 THE COURT: YOU'D HAVE TO FILE A NEW LAWSUIT.

1 MS. MEYER: WE'D HAVE TO FILE A NEW LAWSUIT. THAT'S  
2 RIGHT, YOUR HONOR. BUT AGAIN, WE DON'T THINK WE HAVE TO GO  
3 THAT FAR.

4 THE COURT: SO WHAT PURPOSE WOULD THAT ACCOMPLISH?

5 MS. MEYER: RIGHT. THE PLAIN LANGUAGE OF THE STATUTE  
6 DOES NOT REQUIRE THAT THE PLAINTIFF PROVIDE THE NOTICE, AND IN  
7 THIS CASE SOME OF THE ORIGINAL PLAINTIFFS DID PROVIDE THE  
8 NOTICE BEFORE THE ACTION WAS COMMENCED, 60 DAYS.

9 THE COURT: WOULDN'T IT REMOVE AN ISSUE, THOUGH? AT  
10 SOME POINT, ABSENT A SETTLEMENT, SOMEONE IS NOT GOING TO  
11 PREVAIL IN THIS CASE, AND, YOU KNOW, MAYBE THERE WILL BE A  
12 FINAL DECISION ON THE MERITS OF THIS CASE NEXT YEAR SOMETIME,  
13 PROBABLY NOT THIS YEAR. WHY NOT REMOVE AN ISSUE? WHY NOT JUST  
14 FILE A NEW LAWSUIT AND GIVE THEM NOTICE? WHY NOT JUST FILE A  
15 NEW LAWSUIT?

16 I'M THINKING ABOUT CASES IN WHICH THERE IS A STATUTORY  
17 REQUIREMENT, TITLE VII CASES, A STATUTORY REQUIREMENT THEY  
18 WOULD RECEIVE A RIGHT-TO-SUE LETTER. SOMETIMES, THE LAWSUIT IS  
19 COMMENCED PRIOR TO THE TIME PROVIDED FOR UNDER THE RIGHT TO SUE  
20 AND THAT CONDITION PRECEDENT HAS NOT BEEN FULFILLED, WHICH  
21 PRODUCES TERRIBLE RESULTS LATER IN THE COURT OF APPEALS. I'M  
22 THINKING OF ONE CASE. I CAN'T RECALL THE CAPTION, BUT THE CASE  
23 WAS ACTUALLY REVERSED, ONE OF JUDGE KESSLER'S CASES THAT WAS  
24 REVERSED BECAUSE OF THE FAILURE OF THE PLAINTIFF TO WAIT THE  
25 ACTUAL 60 DAYS OR TO AWAIT THE STATUTORY PERIOD OF TIME WITHIN

1 WHICH TO FILE A LAWSUIT. WOULDN'T IT BE EASIER TO JUST PRINT  
2 OUT ANOTHER COMPLAINT FROM THE WORD PROCESSOR? I MEAN, REALLY,  
3 AND TO REMOVE THIS ISSUE?

4 MS. MEYER: WELL, YOUR HONOR, WE HAVE THOUGHT ABOUT  
5 IT. I GUESS OUR CONCERN IS THE DELAY. I MEAN, THIS CASE WAS  
6 FILED IN JULY OF 2000.

7 THE COURT: I UNDERSTAND. I UNDERSTAND.

8 MS. MEYER: IF WE COULD FILE OUR CASE --

9 THE COURT: AND I DISMISSED ON STANDING GROUNDS, WHICH  
10 I RARELY DO.

11 MS. MEYER: YOU KNOW, AGAIN, YOUR HONOR, IF WE FILE  
12 THIS CASE AND GET IT CONSOLIDATED WITH THIS CASE AND HAVE  
13 EVERYTHING BEFORE YOUR HONOR AND --

14 THE COURT: WHY DON'T YOU DO THAT? JUST DO IT AND  
15 REMOVE THIS ISSUE, AND LET'S GET ON TO THE MERITS OF THIS CASE.

16 MS. MEYER: WE WOULD HAVE NO PROBLEM WITH THAT AS LONG  
17 AS WE COULD FILE THE CASE AND HAVE IT CONSOLIDATED WITH THIS  
18 ONE.

19 THE COURT: IT'S GRANTED. I'LL HEAR OBJECTIONS, OF  
20 COURSE. BUT, YES, GO AHEAD, FILE THE CASE, HAVE IT  
21 CONSOLIDATED. OF COURSE, IT WILL BE CONSOLIDATED.

22 AND WHAT ELSE?

23 MS. MEYER: AND TO MOVE FORWARD WITH THE SCHEDULE THAT  
24 WE'VE WORKED OUT WITH THE DEFENDANTS. WE DON'T WANT TO GO  
25 THROUGH ANOTHER COUPLE YEARS OF MOTIONS TO DISMISS.



1 THE COURT: THIS IS A VERY INTERESTING ISSUE. I DON'T  
2 THINK I NECESSARILY AGREE WITH YOU, BUT LET'S ASSUME I DON'T.  
3 I MEAN, 90 DAYS FROM TODAY, I'M SORRY, JUDGE SULLIVAN DIDN'T  
4 AGREE WITH YOU. DO WE GO TO THE COURT OF APPEALS AGAIN? MY  
5 GUESS IS PROBABLY NOT. YOU'D FILE ANOTHER LAWSUIT.

6 MS. MEYER: WE WOULD.

7 THE COURT: SO WHY NOT REMOVE THIS ISSUE AND WE'LL  
8 KEEP IT ON THE BOOKSHELVES UNTIL THE NEXT TIME WE NEED IT?  
9 CONGRESS INTENDED FOR THIS TO HAPPEN?

10 LET ME HEAR FROM DEFENSE COUNSEL FOR A SECOND. WHY  
11 DON'T I JUST GRANT PLAINTIFFS LEAVE TO FILE AN AMENDED  
12 COMPLAINT, CONSOLIDATE, AND LET'S GET ON WITH THE MERITS OF  
13 THIS CASE? WHAT DO YOU THINK ABOUT THAT?

14 MR. GULLAND: WE THINK WE'RE RIGHT ON THE ISSUE.

15 THE COURT: WELL, SO WHAT? IF YOU'RE RIGHT, YOU'D WIN  
16 AND EVERYBODY IS HAPPY, AND THEY FILE AN AMENDED COMPLAINT, AND  
17 THEN I SEE YOU AFTER THE NEW YEAR.

18 MR. GULLAND: THEN I THINK I'M NOT GOING TO TELL  
19 COUNSEL FOR PLAINTIFFS WHAT THEIR STRATEGY OUGHT TO BE. I  
20 THINK THE IDEA OF FILING A NEW COMPLAINT OR MOTION TO  
21 CONSOLIDATE IS FINE. I THINK WE WOULD STILL TAKE THE POSITION  
22 THAT THE EXISTING CLAIMS OUGHT TO BE DISMISSED OUT, AND THEN  
23 IF --

24 THE COURT: SUPPOSE I DISMISS THEM OUT WITHOUT  
25 PREJUDICE TO THE FILING OF AN AMENDED COMPLAINT WITHIN THE NEXT

1 FIVE MINUTES OR SO. DOESN'T THAT ADDRESS YOUR CONCERN?

2 MR. GULLAND: WELL, I THINK A DISMISSAL ON THIS GROUND  
3 IS WITHOUT PREJUDICE NECESSARILY.

4 THE COURT: RIGHT, BUT I WOULD NOT NECESSARILY WANT TO  
5 DO THAT RIGHT NOW.

6 BUT LET ME INVITE COUNSEL BACK TO THE PODIUM.

7 WHY SHOULDN'T I DISMISS YOUR COMPLAINT? FILE AN  
8 AMENDED COMPLAINT WITHIN THE NEXT FEW DAYS OR SO, AND I'LL  
9 DISMISS THIS COMPLAINT, AND WE'LL GET ON WITH THE BRIEFING  
10 SCHEDULE AND DEAL WITH THIS CASE ON THE MERITS. WHAT'S THE  
11 PREJUDICE TO YOU IF THE DISMISSAL OF THE PENDING COMPLAINT IS  
12 WITHOUT PREJUDICE TO THE FILING OF AN AMENDED COMPLAINT WITHIN  
13 (PAUSE) --

14 MS. MEYER: WOULD YOU BE ISSUING A RULING, THEN, YOUR  
15 HONOR, THAT THE NOTICE REQUIREMENT --

16 THE COURT: ABSOLUTELY NOT.

17 MS. MEYER: WELL, I GUESS I'M CONFUSED ABOUT THE BASIS  
18 FOR WHICH YOU WOULD DISMISS THE CASE.

19 THE COURT: WHY WOULD THERE BE A NEED TO HAVE TWO  
20 COMPLAINTS CONSOLIDATED, TWO COMPLAINTS PENDING ON MY CALENDAR?

21 MS. MEYER: I GUESS WE COULD --

22 THE COURT: YOU'RE GOING TO FILE AN AMENDED COMPLAINT  
23 THAT EXTENSIVELY ADDRESSES THIS NOTICE ISSUE, AND YOUR  
24 COMPLAINT IS IDENTICAL TO THE COMPLAINT THAT'S PENDING BEFORE  
25 THE COURT. WHY IS THERE A NEED FOR THE OLD CASE TO REMAIN, AND

1 WHAT'S THE PREJUDICE IF THE COURT DISMISSES THAT COMPLAINT  
2 WITHOUT PREJUDICE TO YOUR PROSECUTION OF THE NEW COMPLAINT THAT  
3 ADDRESSES THE NOTICE ISSUE?

4 MS. MEYER: I GUESS IF THE BASIS FOR THE DISMISSAL  
5 WERE THAT THERE'S A SUBSTITUTE CASE GOING ON, AS LONG AS WE  
6 DON'T HAVE A DISMISSAL FROM A FEDERAL DISTRICT COURT JUDGE ON  
7 THE GROUNDS THAT --

8 THE COURT: I'M NOT MAKING A FINDING ON THAT.

9 MS. MEYER: -- WE DIDN'T PROVIDE ADEQUATE NOTICE.

10 THE COURT: NO, I CAN SAY IN AN EFFORT TO AVOID, YOU  
11 KNOW, RULING ON THAT. I CAN DO THAT. I CAN SAY THAT, IN AN  
12 EFFORT TO RULE ON THAT, WHICH MAY CAUSE FURTHER DELAY, EITHER  
13 IN THIS COURT OR THE CIRCUIT COURT. IF YOU LOSE, OR WHOEVER  
14 LOSES PROBABLY WANTS TO TAKE IT UP, OR MAYBE NOT. IF YOU LOSE,  
15 YOU'LL PROBABLY FILE AN AMENDED COMPLAINT. IF THERE'S AN  
16 APPEAL -- WELL, LET'S SEE. IF YOU LOSE -- IF THEY WIN AND YOU  
17 FILE AN APPEAL, YOU WOULD ALSO PROBABLY FILE AN AMENDED  
18 COMPLAINT AND THEY'D FILE A MOTION TO DISMISS YOUR APPEAL AS  
19 MOOT, PROBABLY. IN AN EFFORT TO AVOID ALL THAT, THE COURT WILL  
20 PROBABLY SAY, FILE YOUR AMENDED COMPLAINT. I'LL THINK OF  
21 SOMETHING THAT'S APPROPRIATE. BUT, NO, I WOULD NOT DISMISS IT  
22 IN ANY WAY TO ADVERSELY IMPACT ON THE MERITS OF YOUR PENDING  
23 COMPLAINT. THAT'S WHAT YOU'RE CONCERNED ABOUT, RIGHT?

24 MS. MEYER: YES. YES, AND ALSO --

25 THE COURT: WE CAN KEEP IT ALIVE FOR A WHILE, BUT I

1 DON'T WANT -- YOU KNOW, AT SOME POINT, WHAT'S PENDING IS GOING  
2 TO GIVE WAY TO THE AMENDED COMPLAINT --

3 MS. MEYER: I UNDERSTAND, YOUR HONOR.

4 THE COURT: -- WHICH IS PROBABLY GOING TO BE  
5 IDENTICAL, IN ALL LIKELIHOOD.

6 MS. MEYER: I GUESS I'M SOMEWHAT CONCERNED BOTH ABOUT  
7 HOW THE MECHANISM FOR DISMISSING OUR CASE, WHAT THAT WOULD BE,  
8 AND ALSO, YOUR HONOR, I'M CONCERNED ABOUT THE HISTORY OF THE  
9 CASE SO FAR.

10 THE COURT: YOU'RE CONCERNED ABOUT AN ADVERSE RULING.  
11 I WAS JUST SUGGESTING, AND I'VE DONE THIS BEFORE IN TITLE VII  
12 CASES WHERE IT'S CLEAR THAT COUNSEL'S LAWSUIT WAS PREMATURE,  
13 AND I CAN'T RECALL. I KNOW I DIDN'T RULE ON PENDING MOTIONS TO  
14 DISMISS. QUERY WHETHER THERE WERE EVEN MOTIONS TO DISMISS  
15 PENDING. BUT I RECOGNIZED THERE WAS A PROBLEM, AND I SAID,  
16 *LOOK, THERE'S NO SENSE IN DEALING WITH THIS ON THE ISSUES AND*  
17 *TWO YEARS FROM NOW WE REALIZE THE CASE IS HERE PREMATURELY.*  
18 *I'LL GRANT YOU LEAVE TO FILE AN AMENDED COMPLAINT, AND IT KIND*  
19 *OF PROCEEDED ALONG THOSE LINES. I'LL GRANT YOU LEAVE TO FILE*  
20 *AN AMENDED COMPLAINT.*

21 MS. MEYER: YOUR HONOR --

22 THE COURT: WHAT DO YOU WANT FROM ME?

23 MS. MEYER: HOW ABOUT THIS, YOUR HONOR? HOW ABOUT IF  
24 WE GO AHEAD AND FILE AN AMENDED COMPLAINT OR A NEW CASE, I  
25 GUESS IT WOULD BE.

1 THE COURT: RIGHT.

2 MS. MEYER: YOUR HONOR SAID YOU WOULD CONSOLIDATE THAT  
3 WITH THE PENDING CASE.

4 THE COURT: ABSOLUTELY. IT WILL COME TO ME AS A  
5 RELATED CASE ANYWAY.

6 RIGHT, CAROL?

7 THE DEPUTY CLERK: YES.

8 THE COURT: IT WILL COME TO ME ANYWAY.

9 MS. MEYER: SO, HOLD IN ABEYANCE WHAT WE DO WITH THE  
10 OTHER CASE RIGHT NOW. WOULD THAT BE ALL RIGHT?

11 THE COURT: THAT'S FINE. THAT'S FINE.

12 MS. MEYER: HOW DO YOU WANT TO WORK, HOW DO YOU WANT  
13 TO DEAL WITH WHAT WE'VE WORKED OUT SO FAR? HAVE US COME BACK?

14 THE COURT: SURE. WE CAN PICK A DATE FOR AN INITIAL  
15 SCHEDULING CONFERENCE TODAY.

16 YOU'VE ALREADY FILED YOUR ISC, YOUR JOINT REPORT, HAVE  
17 YOU NOT?

18 MS. MEYER: YES.

19 MR. GULLAND: THE FACT OF THE MATTER IS THAT WE PRETTY  
20 MUCH AGREED ON A SCHEDULE --

21 MS. MEYER: YES.

22 MR. GULLAND: -- THAT WE SUBMITTED.

23 THE COURT: YOU KNOW WHAT YOU CAN DO? HOW CAN I AVOID  
24 YOU COMING BACK? I DON'T WANT TO WASTE YOUR TIME  
25 UNNECESSARILY. ONCE THAT COMPLAINT COMES ACROSS MY DESK, THEN

1 WHAT I WILL DO IS ISSUE THE SCHEDULING ORDER. I WILL GIVE  
2 DEFENSE COUNSEL WHATEVER TIME YOU WANT, WHATEVER REASONABLE  
3 PERIOD OF TIME YOU WANT TO FILE YOUR RESPONSIVE PLEADING TO THE  
4 COMPLAINT. ONCE THE COMPLAINT IS FILED AND IT COMES UP TO ME  
5 AS RELATED, I WILL THEN ISSUE A SCHEDULING ORDER THAT MAKES  
6 REFERENCE TO THE SCHEDULING ORDER THAT EXISTS NOW -- I MEAN THE  
7 PROPOSED SCHEDULING ORDER THAT EXISTS NOW IN THE PENDING  
8 CASE -- AND PUT THAT IN PLACE.

9 YOU'VE AGREED ON -- ACTUALLY, I DIDN'T BRING THAT PART  
10 OF MY FILE WITH ME, BECAUSE I DIDN'T THINK I WOULD GET TO THAT.  
11 ACTUALLY, I MAY HAVE IT HERE. I DO HAVE IT. RESPONSIVE  
12 PLEADINGS HAVE ALREADY BEEN FILED. ACTUALLY, I DIDN'T PRINT  
13 THAT OUT. WHAT IF YOU -- I DIDN'T THINK -- ACTUALLY, MAYBE  
14 IT'S HERE. LET'S SEE. ACTUALLY, I DO HAVE THE JOINT  
15 STATEMENT. I DO HAVE THAT. LET ME JUST TAKE A LOOK AT THAT.

16 MS. MEYER: THE ONLY OTHER THING, YOUR HONOR, IS, WE  
17 HAVE A DISPUTE ABOUT THE SCOPE OF DISCOVERY WHICH --

18 THE COURT: ALL RIGHT.

19 MS. MEYER: -- WE BELIEVE NEEDS TO BE, PLAINTIFFS,  
20 NEEDS TO BE RESOLVED.

21 THE COURT: SEPARATE AND APART FROM THE RIGHT-TO-SUE  
22 LETTER?

23 MS. MEYER: YES.

24 MR. GULLAND: WELL, YES AND NO. BASICALLY SETTING  
25 ASIDE THE QUESTION OF WHETHER THE CASE SHOULD BE DISMISSED

1 UNDER THE RIGHT-TO-SUE LETTER, IT'S OUR CONTENTION THAT THE  
2 RIGHT-TO-SUE LETTER AND THE CLAIMS OF ILLEGALITY THAT ARE MADE  
3 IN THE RIGHT-TO-SUE LETTER FRAME THE ISSUES OF THIS CASE AND,  
4 THEREFORE, FRAME THE ISSUES OF DISCOVERY. THE DISPUTE IS --  
5 AND I DON'T THINK THE DISPUTE IS VERY WELL DEVELOPED AT THIS  
6 POINT. IT'S MORE ABSTRACT, BECAUSE WE DON'T HAVE CONCRETE  
7 DISCOVERY REQUESTS THAT FRAME THE DISPUTE.

8 THE COURT: WHY DON'T YOU WAIT UNTIL YOU GET THOSE?

9 MR. GULLAND: THAT'S OUR POSITION, AND IN FACT WE WERE  
10 PREPARED TO SAY WE'RE READY TO START THE DISCOVERY PROCESS  
11 TODAY ACCORDING TO THE SCHEDULE THAT WE'VE AGREED ON, AND WHEN  
12 THOSE DISPUTES COME UP, WE CAN FIGHT THEM. AND LOOK, I'VE  
13 PRACTICED LAW FOR A NUMBER OF YEARS AND I KNOW THAT DISCOVERY  
14 IS BROAD, AND I KNOW THAT I DON'T WANT TO RUN THE RISK OF  
15 TAKING AN UNREASONABLE POSITION.

16 THE COURT: RIGHT. I APPRECIATE THAT.

17 MR. GULLAND: I'M SURE MY COUNSEL --

18 THE COURT: AND THAT'S WHAT I TELL EVERYONE DURING  
19 SCHEDULING CONFERENCES: LOOK, THERE ARE MANY DISCOVERY  
20 DISPUTES THAT HAVE NOT BEEN ADDRESSED IN THE FEDERAL RULES  
21 DECISIONS, AND I TELL THEM DON'T BOTHER ME WITH DISCOVERY  
22 ISSUES, BUT IF I HAVE TO RESOLVE THEM, SOMEONE WILL HAVE TO PAY  
23 MONEY.

24 MS. MEYER: YOUR HONOR, THE DISPUTE AS DESCRIBED TO ME  
25 BY THE DEFENDANTS' COUNSEL IS THAT THE DEFENDANT IS TAKING THE

1 POSITION THAT THE ONLY RELEVANT DISCOVERY HERE PERTAINS TO THE  
2 ACTUAL EXAMPLES, THE INCIDENTS THAT ARE SPELLED OUT IN THE  
3 NOTICE LETTERS, AND THAT WE'RE NOT ENTITLED TO ANY DISCOVERY  
4 CONCERNING THE ROUTINE PRACTICES AND ONGOING PRACTICES THAT WE  
5 BELIEVE ARE AT ISSUE HERE, EVEN THOUGH THE NOTICE LETTERS  
6 DISCUSS ROUTINE, ONGOING PRACTICES AND GIVE INCIDENTS AS  
7 EXAMPLES OF THOSE PRACTICES. THE DEFENDANTS' COUNSEL MADE IT  
8 CLEAR TO ME IN THE MEET-AND-CONFER CONFERENCE, AND I APPRECIATE  
9 HIM BEING CANDID ABOUT IT, THAT THEIR POSITION IS THAT WE ARE  
10 ONLY ENTITLED TO DISCOVERY WITH RESPECT TO THE SPECIFIC  
11 EXAMPLES.

12 AND THE REASON THAT BECOMES CRUCIAL TO RESOLVE BEFORE  
13 WE DO ANY DISCOVERY, YOUR HONOR, IS, OTHERWISE, WE'RE AT A  
14 DISADVANTAGE, BECAUSE OUR INITIAL DISCOVERY REQUESTS ARE  
15 ASSUMING IT COVERS ONGOING, ROUTINE PRACTICES, AND THEIR  
16 INITIAL DISCOVERY ASSUMES THAT IT ONLY CONCERNS THOSE SPECIFIC  
17 EXAMPLES THAT ARE IN THE NOTICE LETTERS.

18 THE COURT: ALL RIGHT. WOULD YOU LIKE AN  
19 OPPORTUNITY -- I PROBABLY SHOULD GET SOME POINTS AND  
20 AUTHORITIES ON THIS.

21 MS. MEYER: WE'VE ALREADY, ACTUALLY, PREPARED  
22 SOMETHING THAT WE CAN SUBMIT TO YOUR HONOR NOW. WE GAVE IT TO  
23 THE DEFENDANTS' COUNSEL ABOUT A WEEK AGO.

24 THE COURT: IT'S IN THE NATURE OF WHAT? A MOTION?  
25 WHAT IS IT IN THE NATURE OF?



1 MS. MEYER: IT WAS JUST A MEMORANDUM. I WANTED TO PUT  
2 IT IN THE MEET-AND-CONFER.

3 THE COURT: THAT WOULD BE GREAT, BUT YOU PROBABLY NEED  
4 TO FILE THAT IN THE NEW CASE.

5 MS. MEYER: THAT'S FINE.

6 THE COURT: THAT'S FINE.

7 WOULD YOU LIKE AN OPPORTUNITY TO RESPOND TO THAT  
8 MEMORANDUM?

9 MR. GULLAND: WELL, CERTAINLY, WE WOULD --

10 THE COURT: SURE, THAT'S FINE.

11 MR. GULLAND: -- AND, YOU KNOW, EVEN THOUGH, YOU KNOW,  
12 WE'RE PREPARED TO START THE SCHEDULE THAT WE AGREED ON BEFORE  
13 TODAY. NOW, IF MISS MEYER PREFERS TO WAIT UNTIL THAT ISSUE IS  
14 RESOLVED --

15 THE COURT: DO YOU WANT TO WAIT?

16 MS. MEYER: YES.

17 THE COURT: WELL, THAT'S YOUR CASE RIGHT THERE, ISN'T  
18 IT?

19 MS. MEYER: YES, YOUR HONOR.

20 MR. GULLAND: THAT'S FINE. WE'RE PREPARED TO DO THAT,  
21 TOO.

22 THE COURT: ALL RIGHT. WE'VE ACCOMPLISHED A LOT  
23 TODAY, THEN.

24 HOW MUCH TIME DO YOU NEED TO FILE YOUR AMENDED  
25 COMPLAINT, THEN? JUST A FEW MINUTES?

1 MS. MEYER: I CAN FILE IT BY FRIDAY OF THIS WEEK.

2 THE COURT: FRIDAY OF THIS WEEK.

3 MS. MEYER: OR SOONER, IF YOU WOULD LIKE ME TO.

4 THE COURT: NO, FRIDAY IS FINE, COUNSEL.

5 MS. MEYER: IF WE DON'T GET ANY HURRICANES OR OTHER  
6 DISASTERS.

7 THE COURT: ALL RIGHT, AND THE RESPONSIVE PLEADING, I  
8 MEAN, IT'S GOING TO BE IDENTICAL. YOU'VE ALREADY FILED YOUR  
9 RESPONSIVE PLEADING. THEN, I MEAN, WHAT? WEDNESDAY OF NEXT  
10 WEEK OR MONDAY OF NEXT WEEK TO FILE YOUR RESPONSIVE PLEADING IN  
11 THE NEW CASE. I ASSUME IT'S NOT GOING TO BE ANY DIFFERENT.

12 MR. GULLAND: I'M ACTUALLY GOING TO BE OUT OF TOWN ALL  
13 OF NEXT WEEK. IF I CAN HAVE SEVEN DAYS, WE CAN FILE IT FRIDAY.

14 THE COURT: THE FOLLOWING FRIDAY, THEN?

15 MR. GULLAND: WELL, IF YOU FILE IT THIS FRIDAY, IF WE  
16 COULD HAVE UNTIL THE FOLLOWING MONDAY, THE MONDAY A WEEK. YES,  
17 SEVEN BUSINESS DAYS OR TEN CALENDAR DAYS.

18 THE COURT: THAT'S FINE. I DON'T HAVE ANY PROBLEMS  
19 WITH THAT. WHATEVER DATE THAT IS, WE'LL PUT THAT IN THERE.  
20 THAT'S FINE.

21 AS OPPOSED TO FILING A MEMORANDUM OF LAW, YOU PROBABLY  
22 SHOULD -- LET'S SEE. THERE'S A DISCOVERY DISPUTE. WHY DON'T  
23 YOU JUST CAPTION THAT AS A MOTION TO RESOLVE DISCOVERY  
24 DISPUTES? LET'S TREAT IT AS A MOTION, AND I'LL GIVE COUNSEL AN  
25 OPPORTUNITY TO FILE A RESPONSE. HOW MUCH TIME WOULD YOU NEED

1 TO FILE A RESPONSE TO THAT, COUNSEL?

2 MR. GULLAND: I THINK WE CAN FILE A RESPONSE IN SEVEN  
3 DAYS.

4 THE COURT: THAT'S FINE. THEN ANOTHER -- THE 21ST  
5 DAY, WHATEVER THAT DAY IS. THEN, I'LL GIVE COUNSEL SEVEN DAYS  
6 FROM THAT DAY TO FILE A REPLY, AND I'LL RESOLVE IT ON THE  
7 PAPERS. IF I CAN'T, IF I HAVE QUESTIONS, I'LL BRING YOU DOWN.

8 MS. MEYER: I'M SORRY. DID YOU ACTUALLY SET A DATE  
9 FOR WHEN MY MOTION WOULD BE DUE?

10 THE COURT: ACTUALLY, I WAS DEALING WITH SEVEN DAYS.  
11 SO, LARA, WHAT'S THE 7TH DAY?

12 COUNSEL WILL FILE YOUR COMPLAINT ON FRIDAY. THEN, I  
13 SAID SEVEN DAYS FROM THAT DAY, WHICH IS A WEEK FROM THIS COMING  
14 MONDAY, THE RESPONSIVE PLEADING IS DUE FROM DEFENSE COUNSEL.

15 DO YOU PLAN TO FILE YOUR MOTION TO COMPEL TO RESOLVE  
16 THE DISCOVERY DISPUTE AT THE TIME YOU FILE YOUR COMPLAINT?

17 MS. MEYER: I CAN DO THAT. ON FRIDAY? I CAN DO THAT.

18 THE COURT: THAT'S FINE.

19 THEN, COUNSEL, ON THE SAME DATE THE RESPONSIVE  
20 PLEADING IS DUE, DEFENSE COUNSEL CAN THEN FILE A RESPONSE TO  
21 THAT MOTION, AND I'LL GIVE YOU SEVEN DAYS FROM THAT DAY,  
22 WHATEVER THAT DAY IS, LARA, TO FILE YOUR REPLY TO COUNSEL'S  
23 RESPONSE TO YOUR MOTION TO COMPEL.

24 ALL RIGHT, IS THAT FAIR?

25 MS. MEYER: YES.

1 THE COURT: IS THAT CLEAR?

2 MS. MEYER: YES, I THINK I'VE GOT IT.

3 THE COURT: AND I'LL ISSUE AN ORDER ELECTRONICALLY IN  
4 THE OLD CASE.

5 MS. MEYER: WILL THAT MEAN WE'LL BE UNDER ECF IN THE  
6 NEW CASE?

7 THE COURT: YES.

8 MS. MEYER: THAT'S ANOTHER ADVANTAGE.

9 THE COURT: YES, YOU WILL. ALL THESE CASES WILL BE IN  
10 ECF IN A COUPLE OF WEEKS. WE'VE MADE PROMISES BEFORE, BUT I  
11 THINK IT'S REALISTIC.

12 ISN'T IT REALISTIC, CAROL?

13 THE DEPUTY CLERK: YES.

14 THE COURT: EVERYTHING IN THE COURTHOUSE WILL BE ECF.  
15 WHAT ABOUT SETTLEMENT, A TERRIBLE WORD? ANY CHANCE?

16 MR. GULLAND: WELL, IT'S NOT A TERRIBLE WORD. THE  
17 PARTIES HAVE DISCUSSED SETTLEMENT A NUMBER OF TIMES. ONE OF  
18 THE DIFFICULTIES FOR US IS OUR PERCEPTION THAT, IN THE FINAL  
19 ANALYSIS, THE PLAINTIFFS SEEK A TERMINATION OF ANY USE OF  
20 ELEPHANTS IN PUBLIC CIRCUS ENTERTAINMENT.

21 THE COURT: IS THAT THE RELIEF YOU'RE SEEKING?

22 MS. MEYER: THE RELIEF WE'RE SEEKING, YOUR HONOR --

23 THE COURT: NO ELEPHANTS IN CIRCUSES?

24 MS. MEYER: -- IS TO BAN THE PRACTICES THAT VIOLATE  
25 THE ENDANGERED SPECIES ACT HERE, WHICH IS --

1 THE COURT: ARE YOU ACTUALLY SEEKING TO BAN ELEPHANTS,  
2 THOUGH?

3 MS. MEYER: WE'RE SEEKING TO BAN THE PRACTICE, YOUR  
4 HONOR, WHICH, IF THAT IS WHAT IS ENTAILED, NOT TO HAVE  
5 ELEPHANTS IN THE CIRCUS, THEN THAT WOULD BE AN OUTCOME, YES,  
6 YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 MS. MEYER: AND IT'S PLAINTIFFS' POSITION THAT THE  
9 EVIDENCE WOULD SHOW THAT THE WAY THESE ELEPHANTS ARE TREATED  
10 VIOLATES THE ENDANGERED SPECIES ACT. THEY'RE BEATEN WITH  
11 BULLWHIPS. THEY'RE CHAINED ALL DAY LONG. THE BABIES ARE  
12 FORCIBLY REMOVED FROM THEIR MOTHERS IN ORDER TO BE TRAINED AND  
13 CONTROLLED BY THE CIRCUS, AND THAT ALL OF THESE ACTS VIOLATE  
14 THE ENDANGERED SPECIES ACT. AND THE FUNDAMENTAL PROBLEM RIGHT  
15 NOW IN TERMS OF HAVING SETTLEMENT DISCUSSIONS, YOUR HONOR, IS  
16 THAT THE DEFENDANT DENIES THAT IT ENGAGES IN THOSE PRACTICES.  
17 SO WE THINK THAT AT THIS POINT THE WAY TO GO IS TO HAVE SOME  
18 DISCOVERY, AND HOPEFULLY PERHAPS DOWN THE ROAD --

19 THE COURT: I TELL YOU WHAT I'M GOING TO DO, THEN.  
20 I'M GOING TO REFER THE CASE, JUST FOR ADMINISTRATIVE PURPOSES,  
21 TO JUDGE KAY ANYWAY AS A MATTER OF RECORD. HE'S THE MAGISTRATE  
22 JUDGE I'LL REFER THE CASE TO FOR SETTLEMENT DISCUSSIONS, SHOULD  
23 THE PARTIES WISH TO DISCUSS SETTLEMENT. I'M NOT GOING TO FORCE  
24 ANYONE ON YOU AT THIS POINT, BUT I DO REFER EVERY CASE TO A  
25 MAGISTRATE JUDGE FOR SETTLEMENT DISCUSSIONS, AND SO IF THE TIME

1 BECOMES APPROPRIATE, COUNSEL CAN THEN APPROACH MAGISTRATE JUDGE  
2 KAY AND TALK TO YOUR HEARTS' DELIGHT. I MEAN, IF THERE'S NO  
3 INTEREST IN SETTLING, THEN THE CASE WILL MOVE ON, BUT I'LL  
4 LEAVE IT UP TO COUNSEL. I'M NOT GOING TO FORCE YOU TO SIT DOWN  
5 AND TALK SETTLEMENT TODAY. THAT WOULD SERVE NO USEFUL PURPOSE.

6 ALL RIGHT, ANYTHING ELSE WE CAN FOCUS ON TODAY?

7 MR. GULLAND: IF I COULD MAKE TWO POINTS.

8 THE FIRST ONE IS, ANOTHER DISAGREEMENT BETWEEN THE  
9 PARTIES IS THE QUESTION OF A PROTECTIVE ORDER IN DISCOVERY.  
10 WE'RE GOING TO SEEK A PROTECTIVE ORDER, AND THE PRINCIPAL  
11 REASON FOR THAT IS THAT THESE PLAINTIFFS IN A NUMBER OF CASES,  
12 AND I DON'T SAY THIS BY WAY OF CRITICISM -- IT IS THEIR  
13 PRACTICE AND PART OF THE WAY THEY OPERATE -- TRY TO USE  
14 PUBLICITY TO THE GREATEST POSSIBLE EXTENT THAT THEY CAN TO TRY  
15 TO ADVANCE THEIR OBJECTIVES, AND WE ARE CONCERNED THAT WE WILL  
16 FIND THAT DOCUMENTS THAT ARE TURNED OVER IN DISCOVERY WILL SOON  
17 THEN BE PROMINENTLY FEATURED ON A WEBSITE, AND THEY WILL BE  
18 CIRCULATED AROUND AND USED IN CAMPAIGNS AGAINST THE CIRCUS AND  
19 DEMONSTRATIONS, AND THAT SORT OF THING. AND UNDER 26(C), FOR  
20 THE PURPOSE OF PREVENTING EMBARRASSMENT AND OPPRESSION, WE WILL  
21 SEEK A PROTECTIVE ORDER, AND WE FEEL THAT IS APPROPRIATE UNDER  
22 THE CIRCUMSTANCES.

23 THE COURT: HAVE YOU DISCUSSED THAT WITH PLAINTIFFS'  
24 COUNSEL?

25 MR. GULLAND: I HAVE, AND IT IS MY UNDERSTANDING --

1 MS. MEYER: NO, YOU HAVEN'T.

2 MR. GULLAND: I'M SORRY.

3 MS. MEYER: IT'S NEVER BEEN DISCUSSED, YOUR HONOR.

4 MR. GULLAND: WELL, I APOLOGIZE. WHEN WE DISCUSSED  
5 THE AGENDA ITEM OF A PROTECTIVE ORDER, AND THIS APPEARS IN THE  
6 JOINT STATEMENT, IT SAYS THAT DEFENDANTS BELIEVE A PROTECTIVE  
7 ORDER IS APPROPRIATE AND THE PLAINTIFFS DO NOT. I'M SORRY.  
8 SO, IN THAT SENSE --

9 THE COURT: THAT'S ALL RIGHT.

10 MR. GULLAND: -- WE DISCUSSED IT. I DID NOT MAKE THE  
11 PRESENTATION TO COUNSEL.

12 THE COURT: THAT'S ALL RIGHT. WHY DON'T YOU GO AHEAD  
13 AND DISCUSS IT WITH COUNSEL? IF COUNSEL DISAGREES, THEN, WHEN  
14 YOU FILE YOUR RESPONSE TO PLAINTIFFS' MOTION TO COMPEL, YOU CAN  
15 AT THE SAME TIME FILE YOUR MOTION FOR PROTECTIVE ORDER, AND  
16 THEN COUNSEL WILL HAVE SEVEN DAYS TO FILE A RESPONSE, AND THEN  
17 SEVEN DAYS FOR A REPLY.

18 MR. GULLAND: LET ME APOLOGIZE. I DID NOT MEAN TO  
19 BLINDSIDE YOU. I THOUGHT THAT WAS UNDERSTOOD, AND IF I  
20 MISUNDERSTOOD --

21 MS. MEYER: FOR THE RECORD, WE DID NOT HAVE A  
22 DISCUSSION ABOUT IT. IT IS NOT IN THE MEET-AND-CONFER REPORT.

23 THE COURT: ALL RIGHT, COUNSEL WILL HAVE DISCUSSIONS.

24 ALL RIGHT, ANYTHING ELSE WE CAN RESOLVE TODAY?

25 WHAT I'LL DO WHEN THE NEW COMPLAINT IS FILED, I'LL

1 JUST DENY THE PENDING MOTION AS MOOT. ANY PROBLEMS WITH THAT?

2 MR. GULLAND: THE MOTION (PAUSE) --

3 THE COURT: THE MOTION TO DISMISS, THE MOTION FOR  
4 JUDGMENT ON THE PLEADINGS IN CASE I (ONE).

5 MR. GULLAND: WELL, AS LONG AS CASE I (ONE) REMAINS  
6 PENDING, WE DON'T THINK THAT OUR MOTION IS MOOT. WE THINK THAT  
7 AS LONG AS THAT CASE IS --

8 THE COURT: WELL, THEN MAYBE THAT CASE SHOULD BE  
9 DISMISSED WITHOUT PREJUDICE, PURSUANT TO CONSENT OF COUNSEL.  
10 ANY PROBLEMS WITH THAT?

11 MS. MEYER: I THOUGHT WE WERE GOING TO -- NOW I'M  
12 CONFUSED, YOUR HONOR. I THOUGHT WE WERE GOING TO HOLD IN  
13 ABEYANCE WHAT WE DID WITH THE FIRST CASE --

14 THE COURT: ALL RIGHT, ALL RIGHT.

15 MS. MEYER: -- UNTIL WE CONSOLIDATED THE TWO CASES.  
16 WE MAY DECIDE TO WITHDRAW THE FIRST CASE, YOUR HONOR. I DON'T  
17 KNOW.

18 THE COURT: ALL RIGHT, I'LL DO THAT. HOW SOON WE  
19 FORGET.

20 ANYTHING NEW WE CAN FOCUS ON?

21 MR. GULLAND: AS LONG AS THAT FIRST CASE DOES REMAIN  
22 PENDING --

23 THE COURT: IT WILL REMAIN PENDING.

24 MR. GULLAND: -- WE BELIEVE THAT, FOR ALL THE REASONS  
25 IN OUR OPENING MEMO, AND PARTICULARLY THE REPLY, IT OUGHT TO BE



1 DISMISSED.

2 THE COURT: THE REPLY WAS MOST PERSUASIVE. I DID READ  
3 IT LAST NIGHT.

4 MR. GULLAND: I UNDERSTAND THAT, AND --

5 THE COURT: THAT'S WHY I HAD TO ASK THE QUESTION, IS  
6 THAT REALLY WHAT CONGRESS INTENDED? MY FIRST LAW CLERK 20  
7 YEARS AGO GIVES NOTICE AND DOES NOTHING ELSE, AND THEN MY  
8 CURRENT LAW CLERK CAN FILE A LAWSUIT. IS THAT WHAT CONGRESS  
9 INTENDED?

10 MR. GULLAND: WE LOOKED AT THE LEGISLATIVE HISTORY --

11 THE COURT: THERE'S NOTHING THERE.

12 MR. GULLAND: -- AND DIDN'T FIND ANYTHING ON IT. IF  
13 WE FOUND SOMETHING GOOD, BELIEVE ME, WE WOULD HAVE TOLD YOU.

14 THE COURT: ALL RIGHT, WE'VE ACCOMPLISHED A LOT.

15 I'LL ISSUE AN APPROPRIATE ORDER.

16 ALL RIGHT, THANK YOU, COUNSEL.

17 MS. MEYER: THANK YOU, YOUR HONOR.

18 MR. GULLAND: THANK YOU, YOUR HONOR.

19 (PROCEEDINGS ADJOURNED AT 11:16 A.M.)

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21 (END OF TRANSCRIPT)

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I, FRANK J. RANGUS, OFFICIAL COURT REPORTER, DO HEREBY  
CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE AND ACCURATE  
TRANSCRIPTION OF MY STENOGRAPHIC NOTES.

*(Original filed)* 

FRANK J. RANGUS, OCR